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ABSTRACT

This text is intended as an aid to Catholic school teachers in the study of legal and ethical issues. In four chapters it attempts to do the following: (1) present basic information about ethics and the law; (2) offer 10 dilemmas in the form of brief case studies taken from school life; (3) provide a basis for discussion of the issues posed by the dilemmas; and (4) offer a model for legal/ethical decision making that is grounded in the set of moral values published by the National Conference of Catholic Bishops through the United States Catholic Conference and by the Sacred Congregation for Catholic Education (1982). A bibliography of legal citations is included. Appended to the text is the "Code of Ethics for the Catholic School Teacher" published by the Department of Elementary Schools of the National Catholic Educational Association. (AMH)

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ETHICS & THE LAW:

A Teacher's Guide to Decision Making

by
Mary Angela Shaughnessy
SCN, JD, PhD

and
John Shaughnessy
CFX, EdD

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ETHICS

THE LAW:

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Mary Angela Shaughnessy
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Dedication

We dedicate this work, with love and gratitude, to our mothers, Corine Bratten Shaughnessy of Louisville, Kentucky, and Celia Shaughnessy Reed of New Albany, Indiana. The Book of Proverbs surely applies to them: "A valiant woman—who can find her? She is far beyond the price of pearls. Her children rise up and proclaim her blessed."

Acknowledgments

The authors wish to thank several persons whose assistance has been invaluable in the preparation of this work. First, we thank Mr. Michael Guerra, Executive Director of the Secondary Department of the NCEA, for his encouragement of this project.

We thank our friends and colleagues at Spalding University, Louisville, Kentucky, where we are privileged to serve. In particular, we wish to acknowledge the support of three individuals: Dean Mary Burns, SCN, EdD, of the School of Education; Dr. Janice Murphy, PhD, Provost; and President Eileen Egan, SCN, JD, PhD.

We owe much gratitude to Miriam Corcoran, SCN, PhD, of Louisville, Kentucky, for her generous and excellent service as proofreader and editorial advisor.

We wish to thank our students whose questions and insights have aided us immeasurably in the preparation of this text and in all our work.

Each person reading this text will probably recall a teacher who made a profound difference in his or her life, a teacher who served as a model of personal integrity. The authors would like to acknowledge high school teachers who made that difference for each of them. Mary Angela Shaughnessy offers much gratitude to Ms. Karen Russ, currently principal of Assumption High School in Louisville, Kentucky. John Shaughnessy expresses his thanks to Brother Edward Keefe, CFX, of Danvers, Massachusetts.

Finally, we thank you, our readers. May your ministry in Catholic education bring you peace and joy.

Mary Angela Shaughnessy, SCN, JD, PhD
John Shaughnessy, CFX, EdD
Louisville, Kentucky
September 1992

Preface

The National Catholic Educational Association has been the proud publisher of seven earlier works on various aspects of the law and Catholic education by Mary Angela Shaughnessy. NCEA's Secondary School Department is privileged to sponsor the current work, *Ethics and the Law: A Teacher's Guide to Decision Making*, which is co-authored by John G. Shaughnessy.

In spite of the fact that Mary Angela Shaughnessy and John Shaughnessy are Sister and Brother, they are not related. At first glance this may seem to present another dilemma to add to the case studies which the authors provide for faculty reflection and discussion. For this case, and only for this case, an answer is provided on the next page.

Ethics and the Law is written for teachers in Catholic schools. The research provides ample evidence of the dedication, commitment and competence of Catholic school teachers. Catholic schools are the Good News in education, and teachers are the heart and soul of the enterprise. The real world of the Catholic school teacher is filled with challenges and opportunities to shape the lives of students not only by what they teach, but by how they teach, and how they live out their ministry. We offer this thoughtful and provocative collaborative effort of the colleagues Shaughnessy as a service and a tribute to our Catholic school teachers, who continue to set high ethical, moral and professional standards for our ministry.

Michael Guerra
Executive Director

Donald Urbancic
President

Secondary School Department
National Catholic Educational Association
Feast of St. Joseph, 1993

About the Authors

Sister Mary Angela Shaughnessy is a Sister of Charity Nazareth who has taught at all levels of Catholic education from elementary through graduate school. She served eight years as principal of a Catholic high school. She holds a bachelor's degree in English and a master's degree in education from Spalding University, a master's degree in English and a JD degree in law from the University of Louisville, and a PhD in educational administration and supervision from Boston College. She is an adjunct professor in Boston College's Catholic School Leadership Program and in the Institute for Catholic Educational Leadership at the University of San Francisco. Currently, Sister Mary Angela is Associate Professor and Director of the Principalship and Supervision Programs at Spalding University. A frequent lecturer at NCEA conventions, she is the author of six NCEA texts and the recipient of the 1991 NCEA Secondary Department Award.

Brother John G. Shaughnessy is a Xaverian brother who has served as teacher, assistant principal, and principal in Catholic high schools. He also served as Regional Administrator for Catholic schools in Nashua, New Hampshire. Brother John holds a bachelor's degree in French from the Catholic University of America, a Certificat des Etudes in French from the University of Maine at Orono, a Master of Arts degree in Education from Fairleigh Dickinson University, and a Doctor of Education degree in educational administration and supervision from Rutgers University. Brother John is an associate staff member of Catholic School Management, Inc. Currently, Brother John is Director of Secondary Education Programs and Assistant Professor of Education at Spalding University in Louisville, Kentucky.

Introduction

Like other professional people, Catholic school teachers face many challenges. One of the greatest is presented by the moral and ethical decisions teachers make daily. In a very real way, the Catholic school teacher is fortunate. The Catholic Church has a definite body of moral teaching to guide those who minister in Jesus' name. Persons agreeing to teach in a Catholic school pledge themselves to behave in ways consistent with that teaching.

Major and more highly publicized moral issues, such as theft, libel, and assault, are rarely the most troublesome aspects of teacher decision making. More frequently perplexing to teachers are those areas where moral guidelines are less clear-cut or are more easily evaded for convenience's sake. Scrutinizing their own motivation, teachers may, at times, find themselves in the position described by T.S. Eliot in *Murder in the Cathedral*:

> The last temptation is the greatest treason.
> To do the right thing for the wrong reason.

Thus, teachers' daily dilemmas usually stem from one of these three sources: uncertainty, expediency, or questionable motivation.

The authors prepared this text as an aid to Catholic school teachers in the study of legal and ethical issues. There are many excellent works concerning morality; but that topic, significant as it is, is not the focus of this work. Here, the authors attempt to do the following:

1. Present basic information about ethics and civil law;
2. Offer ten dilemmas taken from school life for reader consideration;
3. Provide a basis for discussion of the issues posed by the dilemmas; and
4. Offer a model for legal/ethical decision making. Some years ago, the Elementary Department of the NCEA

prepared a Code of Ethics for Teachers. That code is found in the appendix to this text. Readers may wish to consult this code as a resource in the study of this text.

No individual will succeed in the privileged ministry of teaching without sharing insights and experiences with co-workers. This text is one means to such dialogue. The authors hope that this book will enable Catholic school teachers to strengthen their decision-making skills and to commit themselves to lives of personal and professional integrity. The students deserve no less than the best efforts of their teachers.

1

Ethics & the Teacher

Today school teachers are subject to some of the most profound pressures that a modern, capitalistic and technological society can place upon educational institutions. Teachers must be concerned with preparing young people for the workplace, with equipping them with those intellectual and attitudinal skills necessary for effective participation in a democratic, global society. Teachers must also provide students with an understanding of their rights and responsibilities as members of the world community. Catholic school teachers accept an additional challenge—to instill in students those Christian principles and values necessary for functioning as effective and productive members of the church and for being witnesses to the Gospel message. The mandate of the Catholic Bishops' letter, *To Teach as Jesus Did*, sets extremely high standards which compel teachers to adopt a code of behavior that oftentimes differs significantly from that which is portrayed by public individuals. The Iran-Contra affair, the Savings and Loan crises, the Wall Street scandals, and numerous environmental violations serve as simply a few examples of reprehensible public behavior.

Specific advice to teachers as to how to reconcile the conflicts that may arise between their roles as managers of the educational process and instructors of Christian values would be ineffective without first examining the fundamental principles of Catholic education. If teachers are to be effective witnesses and problem solvers, they need to understand the goals, purposes and aims of Catholic education as well as the

role of the Catholic school teacher.

In 1979 the United States Catholic Conference published *Sharing the Light of Faith* which emphasizes the mission of the Catholic school in the moral formation of youth:

> *Through the ages, moral teaching has been an integral part of the Catholic message, and an upright life has been a hallmark of the mature Christian. Catechisms have traditionally emphasized a code of Christian conduct, sometimes summarized under three headings: 1) a sense of personal integrity; 2) social justice and love of neighbor; and 3) accountability to God as a loving Father who is Lord of all.*

In addition, the Catholic Bishops have written in *To Teach as Jesus Did*: "Most important, the commitment of Catholic schools to Christian values and the Christian moral code renders a profound service to society which depends on spiritual values and good moral conduct for its very survival."

In 1982, the Sacred Congregation for Catholic Education, in its publication *Lay Catholics in Schools: Witnesses to Faith*, stated that:

> *The integral formation of the human person which is the purpose of education, includes the development of all the human faculties of the students, together with preparation for professional life, formation of ethical and social awareness, becoming aware of the transcendental and religious education. Every school and every educator in the school ought to be striving 'to form strong and responsible individuals who are capable of making free and correct choices' thus preparing young people 'to open themselves more and more to reality and to form in themselves a clear idea of the meaning of life.'*

There should then be little doubt among teachers as to the central role of moral education in Catholic schools.

The vital element in the achievement of the aims of Catholic schools is the teacher, who must be capable of working within the same set of values being taught to students. It must be remembered that:

> *The more completely an educator can give concrete witness to the model of the ideal person that is being presented to the students, the more this ideal will be believed and imitated. For it will then be seen as something reasonable and worthy of being lived, something concrete and realizable . . . . Students*

> *should see in their teachers the Christian attitude and behavior that is so conspicuously absent from the secular atmosphere in which they live. Without this witness, living in such an atmosphere, they may begin to regard Christian behavior as an impossible ideal.* (*Lay Catholics in Schools*, p. 21)

Thus, teachers should realize that their conduct, their method for problem solving, and the quality of the decisions they make all have a direct relationship to their effectiveness as teachers of values.

Traditionally, ethics has been viewed as the study of what kinds of actions are right and wrong, how the world is and how it ought to be, what kinds of decisions are made and what kinds of decisions ought to be made. Furthermore, ethics has been considered as abstract speculation disassociated from everyday reality. Codes of ethics have been developed for most professions (including one for Catholic school teachers, which appears in an appendix at the end of this text) in an attempt to guide members in the decision making process. These codes, although containing viable assumptions and beliefs, often do not provide answers to the real-life problems encountered by members, nor do they outline a conceptual framework for ethical decision making.

Thus, there is a temptation for members to view each dilemma or problem situationally and avoid the application of general ethical principles that might cause discomfort or tension. But it must be remembered that Catholic school teachers are held to an extremely high standard of conduct; they are significant role models for students who learned from an early age to place their trust in teachers. Each time this trust is violated or ethical standards are violated, there is damage to the integrity and the image of the school, the profession and the church. Because Catholic school teachers are dedicated to a distinctive set of moral values and to pursuing a specific goal, it is incumbent upon them to employ a decision-making process for resolving everyday problems which reflects the values they teach.

Before presenting a model for ethical decision making, the authors wish to provide the following case scenario which will illustrate the application of three traditional ethical theories or approaches to right action.

A Scenario

Sue Ann Meredith, age 14, is one of your students. Sue

Ann has been hospitalized for the past three weeks. You have heard rumors that her illness resulted from complications following a botched abortion. School policy requires that a student who has an abortion be suspended pending an administrative case review. Officially, neither the school administration nor the guidance counselors have made any statement other than that Sue Ann is ill. You are not sure if they know the complete story.

You received a note from the guidance office asking you to empty Sue Ann's locker and bring the contents to the main office for her parents to pick up.

As you opened the locker, Sue Ann's English journal fell open and landed on the floor. As you bent to retrieve it, you noticed the word *abortion* underlined in red ink. You read several pages of the journal. Sue Ann had been engaged in a written conversation with her English teacher for the past several weeks. She told the teacher she was pregnant and was planning on having an abortion. She even told the teacher *when* and *from whom* she was planning on obtaining the abortion. The teacher told her to think carefully, as abortion is a decision that cannot be unmade and she would carry the consequences of it for the rest of her life.

You are deeply shaken. You are fairly sure that no one, other than Sue Ann and the English teacher, knows of the existence of the journal and its contents. You know Sue Ann's parents. You believe that if they are given the journal, they will read it and blame the teacher and the school for withholding information from them. They may well maintain that, had Sue Ann died, the school would have been responsible. You could imagine their suing the school for negligence and alleging that Sue Ann's illness resulted from the teacher's silence.

You also know Sue Ann. You believe that she would not want her parents to know about the existence of the journal. You have always believed that students have a right to privacy. You believe abortion is morally wrong. You totally support the Catholic Church and its position on the sanctity of unborn human life.

Teleology

Based on the writings of Aristotle, the theory from teleology provides one with a two-step approach to determining the right course of action: first, determine the proper end and then decide on the means for achieving it. In other

words, achieving the purpose or end justifies the means. In a school setting, questions that need to be asked are: "What are we trying to achieve?" and "Are we going about this in the right way?" Care needs to be taken so that concern for achieving a goal does not overshadow ethical standards.

Applying the teleological approach to our case scenario, the teacher would be concerned with ends: protecting Sue Ann's privacy of communication which was promised by the English teacher; saving the school and the English teacher from a confrontation with Sue Ann's parents and from possible liability; preserving the trust relationship between teachers and students; protecting Sue Ann's reputation and standing in school; making an example of Sue Ann, so that other students might not consider abortion; making an example of the teacher, so that other teachers will not make the same mistake; demonstrating that some teachers model correct behavior and thus do the right thing.

The teacher discovering the journal is faced with conflicting ends and, as a result, needs further guidance in the decision-making process.

Deontology

The German philosopher Immanuel Kant believed that decisions or choices should be based on moral principles that can be applied universally. He gives paramount status to moral rules. The correctness of a decision or choice is investigated by asking the question "why" and discovering the implied moral principles involved. Once an individual has chosen to accept moral principles, that person needs to obey and apply them at all times and in all cases. A weakness associated with this theory is the lack of concern for the consequences of actions.

In terms of the scenario, this deontological approach would require the teacher to recognize that the first obligation of the teacher is to safeguard the welfare of students, even if privacy is violated. The teacher would probably consider the English teacher wrong in withholding information about the students from the parents. (In fact, with the knowledge the English teacher had, he/she might even be considered an accessory to the murder of the fetus.) By not acting in time, according to this theory, the English teacher condoned the act. Furthermore, the teacher discovering the journal believes that abortion is murder and thus, the student committed an immoral act.

Utilitarianism

John Stuart Mill, viewed as one of the chief architects of utilitarianism, argued that the correctness of actions should be judged by their consequences, i.e., whether the act produces the greatest good for the greatest number of people. Two problems are generally associated with the use of this philosophy: first, how one person defines good may differ significantly from that of another; and second, it is difficult to predetermine all of the consequences of a given action. In spite of these two concerns, this ethical approach to decision making can provide the teacher with the motivation to examine which consequences of actions should be considered.

Applying a utilitarian approach to the case in question would require the teacher to look at the following consequences of his/her action in revealing or not revealing the information: student-teacher relationships would be jeopardized; the trust parents place in teachers would be called into question; the professional reputation of the English teacher might be harmed; Sue Ann's reputation would be affected; undue publicity could be brought upon the school.

What the teacher perceives as the greatest "good" for the greatest number of people would influence the course of action.

Whatever decision the teacher makes would appear to be based on one of these quite different ways of thinking. All three views seem to provide some guidance but none is fully adequate. Therefore, it would seem that the only way to address ethical dilemmas adequately is to integrate all three approaches.

The following model for ethical decision making is presented for the reader's consideration:

A MODEL FOR ETHICAL DECISION MAKING

1. Gather information.
2. Identify the ethical problem(s).
3. Identify the people involved, as well as their roles and responsibilities.
4. Identify possible courses of action.
5. Apply ethical approaches of purpose, principles, and consequences to the proposed courses of action.
6. Choose a course of action and justify it.
7. Evaluate the course of action when possible.

In conclusion, the case of Sue Ann, like life, is very complicated. It illustrates that a decision cannot be made easily or in a vacuum and that there is oftentimes no one right answer. The decisions which teachers make are scrutinized closely by members of the school community to determine if moral principles are respected, if the impact on the lives of individuals is considered, and if duties and responsibilities are being fulfilled. When the decision-maker has empathy, courage, a knowledge of the facts and employs logic, a right course of action will probably become apparent. As an aid in helping to choose that right course of action, the teacher might consider the answer to the question, "When your decision becomes public, will you, role model and teacher of values, be proud of it and its justification?" The response could prove to be of invaluable assistance in decision making.

2

School Law & the Teacher

Educators have ethical responsibilities which require certain kinds of behavior. They also have responsibilities under the law. The newspapers are full of stories of students and parents who have successfully sued teachers and school systems. Teachers question a system in which a moment of carelessness or a well-intentioned mistake can result in staggering monetary losses. It can be tempting to avoid legal issues and hope for the best. A better choice of action is to gain a minimum understanding of the basics of the law and its impact on Catholic school teachers.

It must be understood from the beginning that the law is not the same in the public and private sectors. The Constitution, which is the main source of the law in the public sector, does not apply in the private, hence Catholic, school. (The sole possible exception to this statement lies in the Thirteenth Amendment's prohibition against racial discrimination which courts have used to strike down private racial discrimination.) The government guarantees Constitutional protection; since a public school is a government agency, it must respect the Constitutional freedoms of its constituency. A private agency is not so bound. Catholic schools can proscribe behaviors that the public school must accept. A Catholic school can require the wearing of a uniform; it can prohibit the supporting of causes, such as pro-abortion, that are contrary to church teachings. Conversely, a public school cannot prohibit expression unless there is the strong possibility of harm resulting from the expression.

The landmark public school case, *Tinker v. Des Moines*

Independent School District, involving students who wore black armbands to protest the Vietnam War, produced the now famous statement, "It can hardly be argued that either students or teachers shed their Constitutional rights at the [public] school house gate." Later cases have somewhat eroded this principle. In the 1985 case of *Bethel v. Fraser*, the United States Supreme Court stated, "The first Amendment rights of students are not co-extensive with those of adults." Nonetheless, *Tinker* is still "good law." Public school administrators and teachers operate under very stringent rules, based on Constitutional safeguards, in their regulation of student conduct.

Catholic schools and their teachers, although not bound by the Constitution, are bound by statutes and regulations. For example, statutes in all fifty states require both public and private school teachers who suspect child abuse to report it. In some states, regulations governing teacher certification govern both the public and private school. Federal statutes prohibiting discrimination on the basis of race, national origin, sex (in co-educational settings), and disability (if with reasonable efforts, the disability can be accommodated) can apply in the private as well as the public sector. Failure to comply with applicable state and federal regulations can pose a threat to tax-exempt status, as the 1983 case of *Bob Jones v. the United States* illustrates.

Bob Jones University, a private sectarian institution, practiced racial discrimination in its admissions and disciplinary policies. This racial discrimination was based upon a sincere religious belief. Nonetheless, the United States Supreme Court found that there exists strong public policy against racial discrimination; on that basis, the Internal Revenue Service was permitted to revoke the tax-exempt status of the university. *Bob Jones* indicates that courts can allow the revocation of tax-exempt status of institutions which practice discrimination. However, Catholic school personnel should understand that otherwise prohibited religious discrimination (hiring only Catholics, giving enrollment preference to Catholic students, *etc.*) is permitted in a Catholic school.

Common law is another source of the law affecting Catholic schools. Common law is not made by the legislature; it is found in generally accepted standards of morality and in case law handed down by judges throughout history. In the United States, the common law system includes not only all

decisions dating back to Revolutionary days but also all decisions of English law that can be verified back to the beginning of legal recordkeeping in England. Thus, there is a rich system of common law impacting private education. Judges often apply the law of private association, an English doctrine, to cases involving private schools. Common law is often defined as "fairness," what a reasonable person might expect another reasonable person to do in a similar circumstance. Obviously, there is room for differences of opinion in application of the common law.

In the 1978 Ohio case, *Geraci v. St. Xavier High School*, involving a student who aided a student from another school in entering the building and throwing a pie in the face of a teacher during a final exam, the court made this statement regarding fairness:

> *A private school's disciplinary proceedings are not controlled by the due process clause, and accordingly such schools have broad discretion in making rules and setting up procedures for enforcement; nevertheless, under its broad equitable powers a court will intervene where such discretion is abused or the proceedings do not comport with fundamental fairness. (p. 146)*

Obviously, there is room for differences of opinion in the application of the common law standard of fundamental fairness.

By far the most important source of the law for Catholic educators is contract law. At its simplest, a contract is an agreement for consideration between two parties, each of whom receives something (a legal benefit) and each of whom gives something (a legal detriment). A Catholic school teacher agrees to teach in a Catholic school, thus giving time and talent to the school, and receives a salary in return. The Catholic school gives the teacher a salary and receives the professional services of the teacher. The contract between teacher and school is not simply the contract of employment that the teacher signs; a court is likely to construe the faculty handbook as part of the contract. Thus, it is essential that teachers read and understand the provisions of the handbook.

Parents also have a contract with the school. They agree to pay tuition and abide by school rules (a legal detriment) and they receive an education for their child (a legal benefit). The parent/student handbook can be considered part of the contract between parent and school; hence, it is important that

parents read and understand the handbook and that teachers familiarize themselves with its contents since they are the ones who often enforce the school rules.

In the event of a conflict between school and teacher or school and parent/student, a court will look to the provisions of the contract in determining who should prevail in a lawsuit. A teacher or student in a public school facing dismissal would allege deprivation of a Constitutional right, such as due process under the Fifth and Fourteenth Amendments, whereas a Catholic school student or teacher would have to allege breach of contract and/or fairness considerations. A public school teacher or student who prevails in court will be reinstated. Reinstatement is not a remedy for private breach of contract, however; a Catholic school teacher or student winning a lawsuit may be awarded damages, but the individual will not be reinstated. An ordinary damage award could be the amount of tuition for the year, plus any incidental expenses, including attorney's fees.

Duties of Principals and Teachers

Under civil law, principals have two main duties: first, to make, develop, and communicate rules and policies and second, to supervise teachers. Some other party, such as a school board or a pastor, may have to approve the policies but it is the principal's responsibility to construct and implement policies.

Principals have a serious duty to supervise teachers. In a very real sense, everything that happens in the school is the principal's responsibility. Under the doctrine of *respondeat superior*, "let the superior answer," the principal can be held liable for the actions of teachers. Thus, principals must make supervision of teachers a priority. Supervision is a type of quality control, an assurance that students are being taught. But supervision is more than quality control; it is the teacher's best protection against lawsuits, particularly those alleging malpractice.

Since a student generally has two or three years after reaching the age of majority to bring a lawsuit, teachers could find themselves defending a lawsuit, the basis of which happened several years prior to the commencement of the lawsuit. If, for example, a student were to bring a lawsuit alleging that the student never was taught the material in a given class and had suffered injury as a result, it will be difficult for the teacher to defend the charge if there is no

supervisory data indicating that the teacher was doing an effective job presenting material and ensuring that students were mastering the material.

Numerous public school cases have involved educational malpractice claims. These claims are difficult to substantiate and few students have been successful in these suits. Nonetheless, defending one's self in a lawsuit can be costly and embarrassing. Thus, supervision is insurance for the teacher as well as quality control for the school and the student. [For further discussion of this topic, see the cases of *Peter W. v. San Francisco Unified School District* (1976); *Donoghue v. Copiague Union Free School District* (1979).]

Teachers have two duties under the law: first, to implement rules and second, to supervise students while ensuring both safety and learning. Teachers do not have to agree with every rule, but they do have to enforce every rule. If a teacher cannot agree with a rule and sincerely believes that it should not be enforced, the teacher should seek to understand the reasons for the rule and should pursue its change through proper channels; if unsuccessful in these endeavors, the teacher's only real option is to leave the school. The exercise of such an option does not mean there is anything deficient in the teacher; it may mean that the teacher and the school are not a good match. Whatever the case, the teacher must realize that, as long as he or she is an employee of the school, there is a duty to enforce the rules and regulations of the school. This reality can be difficult for a teacher who, for instance, must discipline a student—or report a student—for breaking a rule with which the teacher disagrees.

A teacher's second legal duty is to supervise students. Supervision is both a mental and a physical act. It is not enough to be present physically; one must be present mentally as well. If a teacher supervising a study period, for example, were to be so engrossed in reading that he or she is not aware of what is going on in the classroom and a student is injured as a result of horseplay, the teacher may be found to have failed in mental supervision. A teacher's duty to supervise does not end when the student leaves the classroom; a teacher can be considered to be "on duty" while walking in a hallway between classes or while attending an athletic event even though the teacher has no assigned duty to supervise the hallway or the athletic event.

Main Types of Cases Arising in Schools

There are four main types of tort cases which arise in Catholic schools. A tort is a civil or a private wrong; it is not a crime. Persons sued in tort will not face criminal charges or jail sentences. They can, however, face significant damage awards and possible loss of teacher certification and/or reputation.

Corporal punishment is a type of tort found in schools. While some states outlaw corporal punishment, the majority of states still permit it. Corporal punishment has a wider definition than simply striking a student with an object for disciplinary purposes; corporal punishment is any touching that can be construed as punitive. Teachers need to guard against any touching of students that could be so designated or judged.

A related area is child abuse. Students can misinterpret even innocent touching and a teacher could find himself or herself facing child abuse charges. Extreme caution is in order whenever a teacher touches a student. To avoid even the slightest hint of impropriety, a teacher should avoid being alone with a single student behind closed doors unless a window or other opening permits outsiders to see into the area. Unfortunately, the case books tell the stories of innocent teachers, acting from the highest motives, who were charged with child abuse by a student who was alone with the teacher.

A second type of tort is **search and seizure**. The Supreme Court ruled in a 1985 case, *New Jersey v. T.L.O.*, that public schools did not have to have a search warrant or probable cause to search a student. They need only have reasonable cause, a rational basis for suspicion. Catholic schools do not have to have even reasonable cause. Some legal experts suggest that, if the Catholic school wishes to begin each day with a locker or desk search, it can do so. There are certainly ethical and moral arguments against such behavior. Many Catholic school principals believe that searches should be held only when there is a reason to conduct them, when the principal or other official believes that there is reason to suspect that contraband will be found. This situation is one example in which what one may legally do is not necessarily the most ethical, moral, or pastoral action to take. One does not have to do that which one has a legal right to do. The law is not the only consideration in educational decision making. Teachers should exercise prudence and sound professional judgment in their choices.

Teachers should know that administrators are given greater leeway in conducting student searches than are teachers. If time allows, teachers should always contact administrators before searching. If possible, a witness should always be present when a teacher conducts a search. While students have no expectation of privacy in such school property as lockers and desks, teachers should use common sense in attempting to search personal items such as bookbags or purses. It is a good procedure to ask the student to empty the containers. If a student refuses to cooperate with a search, the administrator should contact the parent who should be asked to come to school and search the student.

A third type of tort case is **defamation of character.** Defamation of character is an unprivileged communication that harms the reputation of another. Defamation can be either spoken (slander) or written (libel). The truth, traditionally a defense to defamation cases, is not an adequate defense for a teacher who is held to a higher standard. Educators can avoid defamation charges by saying or writing only what is relevant to the educational record. In developing appropriate written records, teachers should consider these guidelines: whatever is written should be specific, behaviorally oriented, and verifiable.

Teachers sometimes wonder how to handle requests for recommendations from students that they might not choose to recommend on their own. No one has a legal right to a recommendation. However, a teacher's refusal to write a recommendation could severely disadvantage a student. Thus, a teacher who believes that an honest evaluation of the student's performance and potential will not be what the student might desire should share that reality with the student. One option might be to require the student and the parent(s) to read the recommendation and sign a statement agreeing that the recommendation be sent. A second option would be to write a reference that gives the student the document needed but allows the teacher to retain personal integrity. A recommendation could read as follows: "This will verify that John Jones was a student in my twelfth-grade world literature class. We studied these genres: (list types). The students submitted the following assignments: (list same.) This student's average was _____." Teachers must guard against making unnecessary statements that reflect unfavorably upon students. If it is necessary to make unfavorable comments, these should be specific, documented, and verifi-

able; some examples might be, "John did not take the Advanced Placement exam" or "Marianne participated in no extracurricular activities."

A fourth type of tort is **negligence**. Negligence is, by far, the most litigated tort. The odds are that if a teacher is sued, the suit will be one alleging negligence. Negligence is an absence of the care one individual owes to another. Teachers owe a higher duty of care to their students than they owe to strangers. Negligence can exist both in actions one takes and in those one fails to take. In order to be found liable for negligence in a court of law, four elements must be present. If one of these elements is missing, legal negligence does not exist.

The first of these elements is the *duty* one has in the situation. If a teacher is walking through a park on Saturday afternoon and encounters two students fighting, the teacher is under no legal obligation to intervene. Even if the students are injured, the teacher cannot be held responsible since there exists no duty to supervise students in parks after school hours.

Second, there must be a *violation of duty*. If a teacher is supervising students in a gymnasium and one student spontaneously runs into another and causes the student injury, the teacher (who has a duty to supervise the students) cannot be found to have violated the duty when an unforeseeable accident occurs.

Third, the violation of duty must be the *proximate cause of an injury*. If a teacher is supervising students constructing sets for a play and two students begin fighting with tools and the teacher does not intervene, that teacher will be responsible if a student is injured as a result of the fight. The teacher would not be the direct cause of the injury as he or she did not strike the student with the tool but the teacher would be the proximate cause. Had the teacher intervened, the injury could have been prevented; hence, a court would find that the teacher is the proximate cause of the student injury.

Fourth, there has to be an *injury*. If there is no injury, there is no negligence. If a teacher were to leave students unattended for fifty minutes in a park and no one is hurt, the teacher is not guilty of legal negligence. The reason for this result is that a person can only seek a remedy of the court if he or she has been injured. If there is no injury, there is no cause of action and hence no negligence.

Malpractice is a special form of negligence. It results

from a failure to teach what is needed or from a failure to teach appropriately. It can also be found when a teacher acts outside the scope of professional duties. For example, a teacher who counsels a suicidal or homicidal student and does not let a parent, counselor, or school administrator know of the student's situation, may be held liable if the student carries out the threatened acts. An illustrative case is *Tarasoff* in which a counselor was found liable for the death of a student when the murderer had previously confided to the counselor his intention to murder the individual.

Related Issues

Two related issues are invasion of privacy and confidentiality. A teacher who shares information about students with someone who does not have a right to know could be guilty of invasion of privacy. As has been indicated earlier, however, withholding necessary information from persons in authority can leave one open to negligence suits.

Teachers are rightly concerned about *confidentiality*. Students have a right to expect that teachers will keep the personal and professional confidences entrusted to them. At the same time, teachers must understand that they have little, if any, immunity from liability if they withhold information concerning a student who has shared feelings evidencing possible danger to self or others. The immunity afforded counselors is not extended to teachers. Today, it is not uncommon to find teachers assuming the role of mentor or advisor. Even though such a role may be essentially a counseling role, legislatures and courts have declined to apply counselor immunity to teachers in these situations. Teachers might well ask themselves this question as a guide in difficult situations: "If this were my child, what would I want and/or expect a teacher to do in this situation?"

Application to Scenario

What legal issues are involved in the scenario presented earlier? The English teacher had a duty to ensure the safety of all students, including Sue Ann. The teacher also had an obligation to respect the confidentiality of student communication, but that obligation must be balanced against the legal requirement that confidentiality cannot be maintained at the expense of health and safety. The English teacher's failure to act on the information might well be considered negligence. Civil law could be interpreted as requiring the English teacher

to make Sue Ann's plans known to someone who is in a position to help—guidance counselor, administration, parents.

The teacher finding the journal must consider his or her legal obligations to ensure that school rules and civil laws are enforced. The right of Sue Ann's parents to be informed of serious matters concerning their daughter may conflict with their daughter's right to privacy.

If the finding teacher does not report, he or she might be held negligent at a later date if it is alleged that the failure of the evidence being brought to light kept Sue Ann from getting necessary after-abortion counseling and allowed Sue Ann to remain in a confidential relationship with a teacher whose professionalism is at least questionable. (It could be argued, of course, that at this point in time the parents know the true nature of Sue Ann's medical problems and can seek counseling, if desired.)

The finding teacher also has responsibilities to the school to see that professional obligations are met. At the same time, the teacher has a professional obligation to protect, when possible, the reputation of colleagues.

There is also the legal issue of the student's possible violation of the school's rule concerning abortions. It the student had an abortion, the school policy calls for suspension pending administrative review. If another student at a later date is suspended for procuring an abortion and she discovers Sue Ann's situation, she could maintain that she was treated unfairly and thus the school has violated both its contractual obligations and its common law duty of fairness.

Model for Legal/Ethical Decision Making

Impelled by a desire to act in a manner that is both legally and ethically sound, the educator may find a model for decision making to be helpful. The model suggested previously may be adapted slightly to include legal considerations as well as ethical ones.

A MODEL FOR LEGAL/ETHICAL DECISION MAKING

1. Gather information
2. Identify the legal issues.
3. Identify the ethical problem(s).
4. Identify possible courses of action.
5. Consider the law and apply ethical approaches of purpose, principles, and consequences to the proposed

courses of action.
6. Choose a course of action and justify it.
7. Evaluate the course of action, when possible.

Conclusion

The above is a brief summary and discussion of major legal concerns for Catholic school teachers. In determining choices of action in day to day ministry, teachers must consider not only legal implications but ethical and moral implications as well.

3

Case Studies

The case study approach is utilized in this section of the book as a means of bringing reality to the process of examining decisions based on ethics and the law. In other words, the theory is being applied to the practice. Discussion of the dilemmas found in each case should provide opportunities for faculty interaction—interaction which will result in active learning. Participants will become directly involved in the decision-making process and their ability to think ethically and legally will be enhanced. In addition, it is the hope of the authors that staff members will be better prepared to solve problems which they may face in the course of their work.

It is suggested that faculty meeting time or in-service time be set aside to consider one case at a time. All participants should have the opportunity to read the cases and reflect on them before beginning discussion.

Directions:

You are being presented with a series of cases involving dilemmas which have been faced by Catholic educators; most of these situations will continue to confront teachers in Catholic schools.

Read the dilemma and reflect on it before beginning the discussion. Use the model for ethical/legal decision making. Share your thoughts with the group members and strive to achieve consensus on a course of action. There is almost never one right answer. At some point in the process, the group should consider the issues identified by the authors which follow each case. Discussion will enable the group members to appreciate each other's point of view.

Dilemma One

One of your students, Mary, asks to meet with you privately after school. She tells you that she is being abused by her mother. You ask her to give you more details. She describes being beaten with a hairbrush, burned with cigarettes, and tied to her bed at night.

You do not believe the student's story. Both parents have confided in you and in the principal that they are concerned about their daughter's overly vivid imagination. They have reported that the student complains of exotic illnesses that the doctor cannot substantiate. You know for a fact because Mary has shown you the documents, that she writes long love letters to movie stars. When she receives the customary form letter back from the studio in response to her letter, she pretends that the letter is personally written by the star and that the star is madly in love with her. Her classmates are used to her fantasies and "humor" her. You have tried to point out to her that pretending is acceptable behavior only when the individual clearly realizes that she is simply "pretending." Mary doesn't seem to recognize the difference between the real and the fanciful.

You know the law requires persons having suspicions of child abuse to report the abuse to the appropriate authority. Your problem is that you do not believe that abuse has occurred and you are worried about the effect that a report would have on the reputations of the parents. Mary's father is a judge; her mother is a well-known public school principal. You like Mary's parents and you honestly do not believe that they are capable of the kind of behavior Mary is alleging.

You know that if you tell the principal about your conversation with Mary, he will make a child abuse report. At a beginning of the year faculty meeting, the principal said that he believed that the law required reporting of any alleged incidents of abuse. According to the principal, it is the teacher's job to report what he/she has seen or heard; it is the police department and/or the social welfare department's job to determine if abuse has occurred. He stated, "We are not the screening agents; we are simply reporters. It is far better to make a report of suspected child abuse that proves to be false than to fail to make a report."

The law of your state reads: "Anyone who knows or has reason to believe that a child is being abused or neglected must cause a report to be made to the Department of Social

Services or to the police."

Relevant Issues

State law is clear on the responsibility to report. Determining whether one has that responsibility depends upon one's belief regarding the abuse. An individual would need to determine what his or her actual belief is, not what he or she might wish it to be. Failure to report suspected child abuse can expose an educator to criminal and civil liabilities.

Failure to make a required report could render one liable to the student under a negligence theory. If a court were to determine that a report should have been filed, the teacher could be found to have violated a duty that proximately caused an injury (in this case, the continuation of the abuse).

Ethically, the teacher is required to protect the student from harm and to ensure his or her safety. The teacher also has ethical responsibilities to comply with school policy, i.e., reporting suspected child abuse, and protecting the reputations of parents and students.

Dilemma Two

It is Monday morning and Tim Jones, a student who scores Bs with no effort, is waiting for you when you enter your homeroom. You've always felt a bit guilty about Tim. You personally don't like him. You believe your dislike stems from the fact that you had to work hard to achieve success in this subject while Tim never opens a book and gets Bs. You've been tempted to give Tim Cs or lower because of his lack of effort, but you have to admit that the quality of Tim's work merits Bs. Tim always knows the answer when you call on him in class and his written work is above average, although you are relatively sure that Tim spends as little time as possible on any written assignments. You have overheard Tim boast about how he writes major essays and book reports during commercial breaks while he is watching football games on television.

Tim is excited and tells you that he needs a favor. He is seeking admission to the Naval Academy at Annapolis and he is holding a teacher recommendation form. He asks you to fill out the form by next Monday so that he can submit it with the rest of his application. The form is labeled, "To be written by teacher of (subject that you teach)."

You draw a deep breath and tell Tim that you will have to think about it. Tim is shocked and exclaims, "But I have

a B average in your class and you know I could have an A average." You reply, "That's just the problem, Tim. We both know you have the ability to be at the top of the class. I'm not sure that I can write the kind of recommendation you would want. The competition for entrance into the Naval Academy is stiff. They want the best students—the best motivated as well as the best performing. When I recommend a student, I am putting my professional reputation on the line. I'll have to think about it. Come back to me tomorrow and I'll let you know what I decide."

Relevant Issues

Legally, a student has no intrinsic right to a recommendation, and a teacher has a legal right to decline to write one. From a practical standpoint, it may not always be a simple matter to exercise that right. The teacher must balance the student's wants and needs with the educator's professional obligations.

Should the teacher decide to write the recommendation, issues of defamation must be considered. If the teacher writes an honest but less than flattering recommendation, there exists the possibility that a student denied admission to a program or school will allege defamation of character.

Ethically, the teacher has a responsibility to the teaching profession and has an obligation to exercise professional judgment. Ethical behavior requires an honest evaluation of student performance and potential.

Dilemma Three

Quinton Blake is a student who has a special place in your heart. Quinton is the oldest of ten children. At 16 he seems to have more than his share of sorrow. Quinton's father died last year. There was very little insurance money, and Quinton's mother has three children still in diapers. Quinton works everyday, including weekends, from 5-11 at a local deli and sandwich shop. You know that he often works past 11 in the evening. He gives his pay check to his mother. You saw him in the hallway consoling his younger sister who wanted a new dress for the freshman mixer. He told her that he would see that she got a new dress. Another student told you that he begged his boss for even more hours so he could get his sister the dress. The boss gave him a bonus instead.

Quinton has a 55 average in your class. He has difficulty staying awake in your class. You know that he is trying in

your class. He would not be a high achiever under the best of circumstances, but these days he has trouble even "scraping by."

Quinton has told you that he tries to study when he gets home from his job but he often falls asleep. His boss lets him study when things are slow at the shop.

You have just finished grading the quarter exam for Quinton's class. In order to pass for the quarter, Quinton needed to score a 70. Quinton received 50 points for correctly answering 25 multiple choice questions; the highest possible multiple choice score would have been 76. There was a 24-point essay question. Quinton's answer was deficient. You believe you can give him 15 points but he needs 20 to pass the course. If Quinton doesn't pass the quarter, he will fail for the year and have to go to summer school. You know that Quinton will not go to summer school because he has to work; he will just drop out of high school. You sigh as you put the paper to one side. You know you have a tough decision to make.

Relevant Issues

The legal issues in this scenario are not quite as clear-cut as in the previous two. If you give Quinton the five points, you would probably not find yourself facing problems *unless* the facts became public knowledge and you had no reasonable explanation for the five points. Reasonable explanation could involve class participation, cooperation, and/or attitude. Courts give wide latitude to educators under a doctrine of judicial restraint, which cautions judges from substituting their opinions for those of professionals unless a blatant injustice has been done.

Ethically, a teacher has a responsibility to be accurate in grading. A teacher is expected to deal with all students in a just and equitable manner. At the same time, a teacher is expected to make allowances for individual needs and to be concerned about the welfare of students.

Dilemma Four

You are part of the disciplinary review board in your school. Two of your students, Jack Smith and Mary Brady, have been arrested and charged with armed robbery. The police allege that Jack entered a convenience store late at night, demanded money, and said that Mary, who was sitting in the car, had a gun in her purse. The students maintain that

the arrest is all a big misunderstanding. Mary says that it was her friend Sarah's night to work and she wanted to play a joke on Sarah by having Jack pretend to be a robber. Sarah corroborates the fact that it was her night to work, but she says that she told Mary that afternoon after school that she was going to call in sick. Either Mary forgot, says Sarah, or Mary intended to rob the store since she knew Sarah wouldn't be there.

The principal has suspended Jack and Mary pending a meeting of the disciplinary review board. There are three members of the board and it will be their job to recommend action to the principal. You are troubled by the fact that, in our system of government, a person is supposed to be innocent until proven guilty. Both Jack and Mary maintain their innocence. You are afraid that if they are put out of the school, it will send a message to the students that if an adult says you are guilty, you are guilty.

On the other hand, you don't know how much more confusion the school can take. There have been news reporters outside the school every day. Students seem split in their approach to the situation. Some don't want to get involved; others believe Jack and Mary should not come back to school until the trial is over and they are found innocent; others are talking about getting sweatshirts made up supporting Jack and Mary. These sweatshirts will have the blind lady of justice symbol with the saying, "Can't anybody take a joke anymore? Free Jack and Mary now."

The faculty is also divided. Some maintain the good of the school is more important than the individual rights of students. Others believe Jack and Mary should be told that they can stay in school if they behave and specifically disavow their folk hero status (in other words, keep their friends from buying and selling sweatshirts). You know you will cast the deciding vote. Of the other two members of the board, one is for letting the students stay and one is for suspending them at least until the trial is over. The principal has already said that she will take the recommendation of the board. So, it's up to you.

Relevant Issues

It is very true that, in our system of government, an individual is presumed innocent until convicted. However, individual rights do have to be weighed against the collective good. The school has a contract to educate students and a

legal responsibility to uphold that contract.

At the same time the school has a legal responsibility to see that all students are being educated in an atmosphere that is as free from disruption as possible. The primary responsibility of school officials is to see that the safety and learning of students are protected. Legally, the school has a right to take whatever steps are necessary to meet its primary responsibility. A Catholic school does not have to grant Constitutional due process to its students, but its officials must ensure that students are treated justly.

From an ethical standpoint, one must consider the fairness/justice issues affecting both the two students involved and the larger student body. If the two students persist in their denial of guilt, can the school pronounce them guilty before there has been a juvenile hearing and disposition?

Dilemma Five

Maribeth Fox is an English teacher on the staff of your school. You and Maribeth have adjoining homerooms. You have worked together on many school projects. You like Maribeth. She is energetic, enthusiastic, intelligent, and very committed to teaching and students.

Over the past several months you have noticed a change in Maribeth's behavior. She no longer stops by your room to chat, and if you drop by her room, she mumbles about having a lot to do and does not encourage you to stay. She avoids you in the halls and at extracurricular activities. You've asked her if anything is wrong, but she simply tells you she is "tired but fine."

Lately, other faculty members have begun to comment on the differences they see in Maribeth's behavior. She never volunteers for anything, never initiates conversation with the faculty, and comes into the faculty room only to pick up her mail. If spoken to, she answers in monosyllables. Last month she was a week late in getting her grades in to the office for report cards.

Recently, Maribeth has been late for school. You have had to speak to her class several times because of the noise level during morning prayer and announcements. You have not mentioned Maribeth's tardiness to Maribeth or to anyone else.

Yesterday you went into Maribeth's room during lunch to ask her a question. She was eating lunch at her desk; when you entered the room, she hurriedly screwed the cap back on

her thermos and bit into a sandwich that had a large piece of raw red onion in it. Maribeth's face was flushed; you are sure you smelled liquor on her breath. Maribeth told you that she was not feeling well and you did not remain in the room.

Today, two of Maribeth's students remained after school and asked to talk with you. They told you that they are really worried about Maribeth; they say she acts strangely. She forgets what she was talking about, she loses her temper easily, and she often pulls a thermos from her desk drawer and takes a drink from it—something she never did before. One of the students tells you that she thinks Maribeth has a drinking problem. This student says that her father has a drinking problem and Maribeth is acting like him. She also states that her father drinks vodka and that is what she thinks Maribeth has in the iced tea in her thermos. They want you to do something to help Maribeth.

Relevant Issues

From a legal standpoint, a teacher has a primary duty to supervise the safety and learning of students. Maribeth's use of alcohol, if true, may be putting her students at risk since she may be incapable of providing appropriate supervision.

Maribeth may be violating civil laws concerning drinking on school or church property. She is certainly violating school rules.

Ethically, a teacher who is abusing alcohol in school is certainly not a good example for students. That teacher's colleagues have ethical obligations to act in a manner that is loyal to school rules and to professional relationships. However, "turning the teacher in" may be viewed as disloyalty.

The school has an ethical obligation to provide a competent teacher for the students. In addition, the school has an ethical responsibility to see that an individual with an illness has an opportunity for treatment.

Dilemma Six

Brandon Burns is the star football player in your school. The football team has won three straight state championships and everyone expects that this year the team will achieve an unprecedented fourth state title. Excitement and school spirit are everywhere. The principal has told the faculty that one of the national news networks is coming to cover the state championship and Brandon.

Brandon is a student in one of your classes. He makes no

secret of the fact that he hates the subject. He does make an effort, but he seems to have no talent for the subject area. You suggested to the academic dean shortly after school began that Brandon would have a better chance of succeeding in another class. The academic dean told you that Brandon would be all right and that you should give him a chance.

Today is Friday. Quarter grades are due Monday. The state championship game is a week from today. Athletes must be passing all subjects in order to play. You have just finished averaging your grades. Brandon has missed a passing grade by one point. You don't give credit for class participation. You have given Brandon every point which you, in conscience, believe that he deserves.

At the midquarter mark, you sent a deficiency note to Brandon's parents and you notified the coach that he was in danger of not passing. The coach got Brandon a tutor. You received a note from the coach this morning; he thanked you for helping Brandon because "in helping Brandon, you are helping the team. Without Brandon, we would not be able to win the championship. Thank you for your school support. I know that you will be *sure* that Brandon passes."

You like Brandon and you like football. If you offer him extra-credit work, you will be doing something you haven't done for any other student. You suspect that the coach is right on at least one point–if Brandon doesn't play, there will be no fourth state championship.

Relevant Issues

There are few legal issues involved in Brandon's case. It is possible, though very unlikely, that one of Brandon's classmates would sue over an alleged unearned point.

The ethical issues are more complex. On the one hand, a teacher has an ethical responsibility to be fair to all students. On the other hand, educators have ethical responsibilities to make appropriate academic placements for students. Is Brandon in a class that is truly beyond his ability? Should individual differences be a factor in decision making about grades?

The coach's pressuring tactics are ethically questionable. How should a teacher respond when asked by a colleague to bend the rules? Can the end justify the means? (Compare these two quotations from Shakespeare's *The Merchant of Venice*: "To do a great right, do a little wrong" and "The quality of mercy is not strained.")

Dilemma Seven

You have just finished reading a memo which you found in your mailbox. The memo, addressed to all teachers and staff, contains a new rule effective immediately: "All students who are late for homeroom will be required to stay after school ten minutes for each minute he or she is late. No excuses, including late buses, will be honored. The names of late students and the minutes late will be noted by each teacher on the absentee form."

You are genuinely distressed by this memo. Half of your students come by bus and you know that lateness is often not a matter they can control. You realize that the principal is concerned about a number of students with a frivolous approach to school attendance. The principal has spoken about the problem of tardy students at a number of faculty meetings. At the last faculty meeting, he proposed the solution found in the memo. You and a number of other teachers tried to reason with him and suggested that there be a provision for excused tardies. The principal said he would think about what had been said at the meeting but he believed that his mind was made up.

You are reasonably certain that tardy students who arrive on a late bus will ask you to not submit their names to the office. You wonder what you will do the first day the bus is late.

Relevant Issues

A teacher has a primary legal, contractual duty to implement school rules. If a teacher believes that a given rule is unfair, change should be sought through appropriate means. In this case, the teacher has used lawful means to seek change but has not been successful.

From an ethical viewpoint, the teacher has responsibilities to enforce school rules, to obey school policy, and to enforce rules and policies equally. The teacher has an ethical obligation to avoid being a party to injustice.

Dilemma Eight

One of your students, Pat Thompson (if you are male, assume Pat is a male; if you are female, assume Pat is a female), is demonstrating an intense interest in you. You have noticed that he/she drops by every morning before school and every afternoon after school. Sometimes Pat talks; sometimes he/she just sits in a desk and stares at you. If you are speaking

with another student in the hallway, Pat often appears, seemingly out of nowhere, stands near you and attempts to listen to whatever conversation is in process. When you attempt to gently suggest that you will see Pat later, he/she leaves but looks very disappointed. Later, Pat has asked you why you were so mean to him/her. You have attempted to explain to Pat that you must be available to all your students and that means that sometimes people must wait their turn.

Last week one of your colleagues told you that he overheard Pat telling another student that the two of you had a great time attending a concert together over the weekend. You were astonished since the statement was not true. You told your colleague that she must be mistaken; she was adamant that she had overheard exactly what she repeated to you. You did not mention the report to Pat.

You have just returned to your homeroom at the end of a long day. There is a note in a sealed envelope. You open it and read:

> Dear Mr./Ms. _____,
> You mean the world to me. Without you, I would not want to live. Please write back and tell me that I am special to you, too.

Relevant Issues

This case presents the teacher with some legal concerns. If the teacher responds to the note, he/she runs the risk that the student may "read more into it" and misrepresent its meaning to students, parents, and/or school staff. The teacher could conceivably find him or herself accused of improper, even sexual, interest in the students. It is not unheard of for parents of students in similar circumstances to threaten legal action for alienation of affections.

The teacher faces ethical dilemmas. Does he/she share a student's personal note with an administrator and thus violate the student's right to privacy? What action can the teacher take that will safeguard student welfare? How can the teacher protect his or her reputation and still maintain an appropriate professional relationship with the student?

Dilemma Nine

Melissa Mitchell is a young woman in your ninth-grade English class. Melissa is a shy but likeable person. You have encouraged Melissa to speak up in class and to initiate independent projects. Melissa has done well in your class.

For the last several weeks, Melissa has been talking with you about a problem that she has. She has asked that you keep these conversations confidential. She wants to run away from home. She feels that her parents don't understand her. Even though she says she will miss her family and you, her favorite teacher, she feels that it is something she needs to do.

Today, she stopped by after school. She told you that she will be leaving sometime during the next month. She wants you to know that she will write to you so that you will know that she is OK. She tells you that you are the only friend she has.

Relevant Issues

The teacher has a primary legal duty to ensure student safety. The student has a right to expect that the teacher will keep confidential conversations private unless life and/or safety are threatened. Should the student run away and be injured, the teacher might be charged with negligence if the parents allege that, had the teacher reported the student conversation, the running away could have been averted and the injury prevented.

The teacher is perched on the horns of an ethical dilemma. The teacher must balance the professional obligation to hold sacred the student's trust and right to privacy with the responsibility to protect the student from harm.

Dilemma Ten

Yesterday as you were walking down the hall towards the faculty room after one of your classes, you witnessed another faculty member, Father Jim, outside his classroom with a student. The student had obviously created some kind of disturbance inside the classroom and Father Jim had brought him into the hall to try to reason with him. You were shocked when you realized that the student was using profanity and was referring to Father Jim in four-letter words. The student told Father Jim that he would be sorry that he embarrassed him.

As you came upon the pair, Father Jim told the student to go back into the room. Father Jim said to you, "Sorry for the disturbance," as he entered the room.

After school you went down to Father Jim's room. He obviously was uncomfortable with the fact that you witnessed the problem. He told you that the student was screaming obscenities in class and that he had taken him outside to calm

him down. You told Father Jim that you heard the words the student used. You asked Father Jim what he is going to do to discipline the student. Father Jim replied that he wasn't going to do anything and he would appreciate it if you would stay out of it.

Today, three students came to you and said that they didn't think it was fair that a student could behave the way the student did in Father Jim's class and get away with it.

Relevant Issues

Common law demands that students be treated fairly. This requirement means that one student should not be punished for a certain action while another student performing the same or similar action is not punished. There could be legal ramifications for the school if, at a later date, another student was suspended or otherwise severely disciplined for verbally abusing a teacher and/or using profanity.

The teacher witnessing the event may not have personal legal responsibility for disciplining the offending student but he or she does have a contractual obligation to uphold school rules which undoubtedly require that students respect teachers.

Ethical behavior requires that teachers enforce student discipline equitably. Teachers are expected to exercise professional judgment in the school setting. Teachers and students have a right to expect that school personnel will respect their privacy. Is there ever a time when a teacher should intervene in a discipline situation involving another teacher?

A teacher must balance the ethical requirement to exercise professionalism in matters concerning the behavior of other teachers with the ethical obligation to ensure fair treatment of students and respect for authority. Is "whistle blowing" in order here?

4

Conclusion

The law is, at its core, based on an ethical approach to life, but today the law has progressed to a point where its original impetus may no longer be recognized. Common law principles, based on principles of right living, may not be apparent in codified law. In other words, what one may legally do is not always the most ethical or moral action to take. History is full of examples of the clash between law and ethics, between law and morality.

In the 1896 U. S. Supreme Court case of *Plessy v. Ferguson*, involving the question of whether railroad companies could have separate cars for blacks and whites, the court produced the statement, "separate but equal." Equality, it was believed, was not compromised by separating people along racial lines so long as the facilities they used were equal. That verdict stood as the law of the land for over fifty years until it was overturned by the 1954 case, *Brown v. the Board of Education*, in which the Supreme Court declared, "Separate is not equal."

In more recent times, *Roe v. Wade* resulted in the Supreme Court's ruling that a woman's right to privacy in her body included the right to terminate the life of a fetus within it. The *Roe* decision has been restricted by recent statutory and case law; still, in many instances it is legal to obtain an abortion in the United States today. Procuring a legal abortion, however, does not allow one to escape from the moral and ethical ramifications of that procurement.

As the dilemmas have demonstrated, the teacher in a Catholic school is often presented with choices that present moral, ethical, and legal challenges. The decisions teachers make have ramifications beyond their own lives. If students see teachers and principals evidencing respect for the law and for strong personal ethics, they will be more likely to value the

law and develop a personal code of ethics. Teachers are role models for students. What students see teachers do and say impacts them. There is an old adage, "Give a man a fish and he is fed for the day. Teach him how to fish and he can feed himself for life." If teachers simply tell students what to do instead of showing them how to live by the example of their own lives, they may be doing little more than handing students fish, sustenance for the moment.

Jesus' words in the Gospel offer a timely admonition, "Better for you that you be at the bottom of the sea with a millstone around your neck than that you lead one of these little ones astray." What teachers choose to do and what teachers choose not to do may have far more effect on students' lives than any formal subject matter that is taught.

Developing an ethical approach to life is an activity. The more one engages in it, the more adept one becomes at it. Teaching in a Catholic school provides many opportunities for practice in the development of an ethical approach to life that is respectful of the law, both the Gospel and the civil code.

The demands of ethics and the law require courage in decision making. Although the educator may be able to decide "big" ethical dilemmas fairly easily, the more mundane realities of the classroom may not be so simple. It may be tempting to follow human wisdom and adhere to the letter of the law, but surely teachers in Catholic schools would aspire to St. Paul's doctrine as expressed in 2 Corinthians 3:6-7—"the letter kills, but the spirit of the law gives life." Thus, those who say they "teach as Jesus did" would never repay a disrespectful student with sarcasm or ridicule. Rather, they would pray and struggle to understand and remedy the *reasons* for the student's unacceptable behavior.

Students in Catholic schools may not have Constitutional protection, but they do have rights rooted in the Gospel. They are persons to be respected and nurtured; they have a right to learn both academic lessons and a value system for life. They have a right to make ethical choices in the laboratory of the school. They have a right to make mistakes and to be corrected in a nurturing atmosphere. They have a right to the support and care of their teachers.

An ethical life for a teacher requires many seemingly small choices which, when added together, equal an ethical approach to life. Such choices include: giving a full day's work for a full day's pay rather than cutting corners when no one would notice; doing one's best when a lesser effort would

be "good enough"; not playing favorites; fully correcting student work and returning it within a reasonable time; not sharing confidential information with persons who have no right to it; not criticizing colleagues or administrators, etc. In short, the everyday ethics of teaching requires doing what one ought to do.

One of the heroines of recent times is Christa McAuliffe, the school teacher from New Hampshire who was to have been the first ordinary citizen in space. Mrs. McAuliffe has been described by those who knew her as someone who did not think herself special, and yet she was someone who performed the ordinary tasks of life in an extraordinary manner. A Catholic school graduate, she produced the now famous saying, "I touch the future. I teach."

Today persons such as Ivan Boesky and Charles Keating command attention on the front pages. Numerous people face trial in spy scandals. Rapists and other criminals committing various acts of violence are the subject of newscasts. Where did these people get their values? Where are today's Nathan Hales, Sergeant Yorks, Tom Dooleys, Mollie Pitchers, and Dorothy Days? Who will be tomorrow's leaders? Perhaps they are the ones sitting in Catholic school classrooms today.

Both religious and civic communities need a future citizenry rooted in ethics and a respect for the law. That future may well depend upon the quality of decisions teachers make in schools today.

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Appendix

Code of Ethics for the Catholic School Teacher
Department of Elementary Schools
National Catholic Educational Association

Preamble

"GO, TEACH!" Christ charged His first disciples. Since the beginning of Christianity, education has been one of the most important missions of the Church. Its success depends upon the professional competence, quality and, above all, the commitment of the teacher to Christ.

This Code of Ethics for the Catholic School Teacher is a concise description of the person who is growing in faith, hope, and love of Christ. It specifies the attitude and the practice of the Catholic school teacher in relation to the student, the parent, the community, and to the profession. This code offers a guide by which to live, a goal toward which to strive, and a promise of lasting success.

Principle I: Commitment to the Student

As Catholic school educators we believe that students, like ourselves, are pilgrim people, making their journey through this life with a constant focus on the next. As Christian Catholic educators, we have a special responsibility to encourage each student to achieve his/her maximum potential. We work to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. In fulfilling our obligation to the student, we are called to

1. Help students see the relevance of a Christian value system in their daily lives.
2. Help students learn to relate human culture and knowledge to the news of salvation.
3. Show Christian concern about the joys and problems of each student.

4. Speak with charity and justice about students even when called upon to discuss sensitive matters.
5. Work with students in preparing liturgies, para-liturgies, and other religious programs.
6. Respect confidential information concerning students and their homes.
7. Plan appropriate service projects for students that will develop their sense of responsibility to the community.
8. Enable students to grow in a sense of self-worth and accountability by selecting activities which promote the positive self-concept as becomes a maturing Christian.
9. Develop the students' knowledge and understanding of the subject(s) for which we are responsible, without suppression or distortion.
10. Refuse remuneration for tutoring students assigned to our classes and reject any other use of our students for personal financial gain.

Principle II: Commitment to Parents

As Catholic educators, we believe children are influenced by home, community, and a society in which attitudes toward Christian values are often challenged. Parents, the source from whom children and youth derive their values, entrust their children to the Catholic school to instruct, complement and intensify the education and formation begun in the home. We are called to assist these parents in fulfilling their obligation for the Christian formation and education of their child; therefore, we will

1. Respect parents' fundamental human right to know, to understand, and to share in decisions that affect the education of their child by
   - Assuring parents of a commitment to ongoing education as a professional educator and informing them, upon request, of educational qualifications.
   - Keeping parents apprised of the curriculum and methods of instruction.
   - Providing opportunities for parents to help shape classroom and school policies and keeping them well-informed regarding all current policies.
2. Develop educational programs and activities to enhance family life as well as the home-school relationship.
3. Respect any confidential information which parents share.
4. Report to parents their child's progress regularly and as

needed, in a spirit of charity, with professional accuracy and honesty.

Principle III: Commitment to the Community

As Catholic educators, we believe the school community is both an agent of appropriate change and a preserver of basic tradition. We consider the school community an integral part of the parish whose people it serves, and a vital force for preparing future civic and Church leaders. In fulfilling our obligation to our apostolic profession, we are called to

1. Promote the peace of Christ in the world by
   - Modeling peaceful solutions to community conflicts.
   - Encouraging a spirit of cooperation and avoiding the extremes in competition.
   - Developing skills which will enable students to interact with society for a better world.
2. Cooperate wholeheartedly in the continued building of parish life and spirit by
   - Emphasizing the integral nature of the Catholic school within the parish and community.
   - Assisting communication concerning parish resources, needs, and events.
   - Modeling active participation in one's own parish.
3. Develop student potential for constructive Christian leadership within the American democracy by
   - Ensuring an adequate understanding of history and its lessons.
   - Providing opportunities for taking responsible moral positions on current issues.
   - Offering instruction and practice in leadership skills.
4. Contribute to the well-being of the area in which the school is located by
   - Reflecting the philosophy of the school in one's attitude and actions.
   - Manifesting respect and appreciation for the work of educators in other schools and systems.
   - Encouraging in students a respect for the person and property of their neighbors.
   - Avoiding inappropriate school activities that disturb the peace and order of the community.

Principle IV: Commitment to the Profession

As Catholic school educators, we believe that professional excellence in Catholic schools directly influences our

Church, country and world. We strive to create a Christian environment which promotes sound moral and professional judgment. Through our spirit of joy and enthusiasm, we encourage others to join us in our apostolate of teaching in a Catholic school. In fulfilling our responsibilities as professional educators we are called to

1. Maintain professional standards by
   - Preserving the reputations of colleagues, administrators, and students.
   - Safeguarding the exchange of confidential information.
   - Refusing to use the classroom to further personal ends through the sale of any goods, products, or publications.
   - Refraining from using the school as a platform for one's own beliefs which are not in accord with the school philosophy or Church teaching.
   - Overseeing the duties of non-professionals, making sure they assume only those responsibilities appropriate to their role.
   - Assisting in the orientation of educators new to a position and/or school.
   - Considering the obligations of the teaching contract as binding in a most serious manner, conscientiously fulfilling the contract.
   - Terminating unexpired contracts only because of serious reasons, with the consent of both parties, and after sufficient notice.
   - Upholding the authority of the school when communicating with parents, students, and civic community.
   - Presenting honest, accurate professional qualifications of self and colleagues when required for professional reasons.
2. Seek and encourage persons who live a life consonant with Gospel values and Catholic Church teachings to pursue the apostolate of teaching by
   - Modeling the faith life and witnessing to the Faith Community on the parish, diocesan, national, and world levels.
   - Exemplifying the teachings of Jesus Christ by dealing with children and adults in true love and justice.
   - Exhibiting knowledge of the Church documents, especially *To Teach as Jesus Did, Sharing the Light of Faith* and *The Catholic School.*

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